



Ninety-Eighth Legislature - First Session - 2003
Committee Statement
LB 146

Hearing Date: February 12, 2003

Committee On: Judiciary

Introducer(s): (D. Pederson, Combs, Johnson)

Title: Change provisions of the Nebraska Hospital-Medical Liability Act

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7 Yes Senators Brashear, Foley, Mines, Mossey, Petersen, Quandahl, Tyson

No

Present, not voting

1 Absent Senator Chambers

Proponents:

Senator Don Pederson

David Buntain

Peter Whitted

Michelle Petersen

Brent Peterson

Representing:

Introducer

Nebraska Medical Association

Nebraska Medical Association

Nebraska Medical Association

Nebraska Hospital Association

Opponents:

Representing:

Neutral:

John Lindsay

Representing:

Nebraska Association of Trial Attorneys

Summary of purpose and/or changes:

Legislative Bill 146 changes provisions of the Nebraska Hospital-Medical Liability Act (Act). The bill makes three proposed changes.

Currently, the Act provides that health care providers contribute a regular surcharge that funds the Excess Liability Fund (Fund). The amount of the surcharge is based on the health care providers' annual premium paid for maintenance of current financial responsibility. Presently the surcharge is collected by the Department of Insurance (Department). LB 146 would require

the insurer that provides the coverage for the health care provider to collect the surcharge and remit it to the Department within thirty days of receipt.

The Act provides that no action against a health care provider may be filed in court unless the claimant has filed his or her action before a medical review panel. The claimant may waive his or her right to a panel review. LB 146 would allow either party to request that a judge shall terminate the panel proceedings if the review panel has not convened within six months of the panel proceedings.

Finally, LB 146 eliminates a section of the Act that has been rendered obsolete.

Explanation of amendments, if any:

The committee amendment (AM 1202) makes several minor changes to the bill.

Section 2 of the amendment provides that the insurance provider for the medical service provider shall collect the surcharge and remit it to the Department within thirty days of receipt. The amendment further delineates the required information that the insurance providers are to compile and remit to the Department with regard to the collected surcharge.

With regard to the provision of the bill that allows for a party to request that a court terminate the medical review panel proceedings, the amendment clarifies that the decision to dismiss the pending action is discretionary with the judge.

The amendment also incorporates two bills that relate to medical malpractice. Herewith are summaries of such bills, as they were amended, and the sections of the committee amendment in which they appear.

Legislative Bill 23

Section 1 of the amendment is LB 23, as such bill was amended by the Judiciary Committee. LB 23 increases the amount recoverable allowed under current Nebraska law for claims filed pursuant to the Nebraska Hospital-Medical Liability Act. Under current law, amounts recoverable are limited to \$1,250,000 for any occurrence after December 31, 1992. LB 23, as amended, would increase the amount recoverable to \$1,750,000 for any occurrence after December 31, 2003.

Legislative Bill 162

Section 7 of the amendment is LB 162, as such bill was amended by the Judiciary Committee. LB 162 would provide immunity for physician, osteopathic physician, dentist, physician assistant, nurse, or physical therapist who provides professional services without compensation at designated clinics or agencies. If a practitioner provides volunteer services in a free clinic or a facility operated by a not-for-profit organization, an agency of the state or a political subdivision, such practitioner is immune from civil liability for any act or omission that results in damage or injury.

The practitioner is not entitled to immunity if the injury or damage was caused by the willful or wanton act or omission of the practitioner. Nor is the practitioner entitled to immunity for the designated professionals if the free clinic or other facility is operated by a licensed hospital.

The practitioner is entitled to immunity only if the practitioner has not been disciplined by the applicable credentialing board in the five years before the act or omission occurred that caused the injury.

Finally the amendment does not allow the medical professional to receive protection of the immunity provision if any damage or injury is caused by such practitioner during the operation of a motor vehicle or while impaired by alcohol or illegal drugs.

Senator Kermit A. Brashear, Chairperson